IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1911 OF 2005

Shri Ramesh Hari Jadhav, Petitioner
Vs
Sou.Chhaya Sanjay Jadhav & anr. Respondents.

Mr Dilip Bodake, for the petitioner.
Mr L.S.Gaikwad, for respondent no.1.
Mr R.Y.Mirza, APP for respondent no.2.

CORAM : D.B.BHOSALE, J.

DATED : 11th August, 2006

P.C.:

1. Heard the learned counsel for the parties.

2. This petition is directed against the orders passed by the courts below in the proceedings under section 125 of the Criminal procedure Code (for short, "the Code"). The trail Court allowed the application and directed the petitioner-husband to pay maintenance at the rate of Rs.1000/- per month from the date of institution of the application under section 125 of the Code. The application was filed in March, 2003. That order was admittedly passed exparte since the summons issued against the petitioner by registered A.D was not claimed by him. However, the petitioner carried that order in revision before the Sessions Court. The Sessions Court, vide its judgment and order dated 13.6.2005, dismissed the revision application. In paragraph 5 of the judgment of the

Sessions Court, the learned Judge has recorded that the contention of the applicant disputing the marital relationship between the parties cannot be considered for the first time in revision and the revisional court cannot be converted into trial court. Admittedly, the order of the trial Court is exparte and as a result of which the revisional court refused to consider the contentions of the petitioner on merits. The learned counsel for the parties fairly state that I need not record reasons of setting aside the impugned judgments and orders passed by the courts below. Keeping that in view and considering the overall facts and circumstances of the case, I pass the following order.

(a) The impugned judgments and orders passed by the courts below on the application and in the revision dated 1.12.03 and 13.6.05 respectively are quashed and set aside. The application of the respondent-wife under section 125 of the Code is restored to file. The trial Court shall decide the application afresh. The petitioner-applicant waives service and therefore now need not be served independently. Both the parties shall appear before the trial Court on 4.9.06 with a copy of this order. The trial Court shall decide the application as expeditiously as possible and preferably within a period of six months therefrom.

(b) The petitioner-applicant is directed to deposit an amount of maintenance at the rate of Rs.1000/- per month that was fixed by the trial Court from the date of application,i.e. March, 2003, i.e. Rs.41,000/- till August, 2006, on or before 4.9.06. This is without prejudice to his legal rights and contentions. Mr Bodake, learned counsel for the petitioner, on instructions, states that the petitioner will deposit the aforestated amount within the time stipulated by this order. His statement is accepted. On depositing of the aforesaid amount, liberty to the respondent-wife to withdraw 50% of the amount unconditionally and remaining 50% on furnishing security to the satisfaction of the trial Court.

(c) The petitioner is also directed to deposit Rs.1000/- per month every month till disposal of the application under section 125 of the Code, of which the respondent-wife will be allowed to withdraw only Rs.500/- unconditionally. The trial Court shall decide the application under section 125 filed by the respondent-wife on merits in accordance with law and uninfluenced by the observations made in this order. All contentions are kept open to be agitated before the trial Court.

(d) With these directions, the writ petition is disposed of.

(D.B.BHOSALE,J.)